

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JUDY VIVANCO,

Appellant,

v.

SKAGIT VALLEY COLLEGE,

Respondent.

) Case No. RULE-98-0043

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and NATHAN S. FORD Jr., Member. The hearing was held at the Skagit Valley College, Administrative Annex Building, Mount Vernon, Washington, on October 6, 1999.

1.2 **Appearances.** Appellant Judy Vivanco appeared *pro se*. Respondent Skagit Valley College was represented by William Coats, Assistant Attorney General.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that Respondent violated WAC 251-01-850 by improperly determining her salary after her exempt position was converted to classified status.

1.4 **Citations Discussed.** WAC 358-30-170 and WAC 251-08-150.

II. FINDINGS OF FACT

2.1 Appellant Judy Vivanco is an Early Childhood Program Manager and permanent employee for Respondent Skagit Valley College. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 4, 1998.

2.2 Prior to September 1, 1998, Appellant was in an exempt position as a Head Start Center Lead Teacher (working title Center Lead Teacher). Appellant entered into an employment contract with the College for the period of September 1, 1997 through August 31, 1998 which established her yearly salary at \$22,797.60. Appellant was designated to work 184 days during the nine month school year, and she worked 7 hours a day (87.5% time); however, Appellant's pay was spread out for a 12-month period. Of the 184 days Appellant worked, 4 days were for preparation in August before classes started and 180 were for days which she spent in the classroom teaching.

2.3 By letter dated August 24, 1998, Nancy Anderson, Personnel Director, informed Appellant that her position at the College's Head Start Center had been converted from exempt status to classified status effective September 1, 1998. Ms. Anderson also informed Appellant that her new title was Early Childhood Program Manager (working title Center Manager); that she was appointed to a cyclic year position beginning September 1, 1998 through August 31, 1999; that her cyclic year appointment included two leave without pay periods from December 21, 1998 through January 1, 1999 and June 16, 1999 through August 31, 1999; that she was assigned to a non-scheduled work period designation working a total of 35 hours per week (87.5% time). At that time, the salary range for the Early Childhood Program Manager classification was set at Range 44. Ms. Anderson informed Appellant that her monthly salary was being set at Range 44, Step I (\$2556.75 per month).

2.4 Appellant continues to work 180 days per year, and she receives additional compensation for any preparation work she performs in the month of August. However, Respondent can no longer spread out Appellant's pay during a 12-month period and is required to pay Appellant a monthly salary for the actual months worked during the school year.

2.5 To determine which step to place Appellant on the salary grid for a Range 44, Respondent first determined Appellant's hourly rate based on the 1997-98 contract salary she received immediately prior to becoming classified. Respondent used the following calculation to determine this rate:

- $\$22,797.60 \text{ yearly salary} / 184 \text{ work days} = \$123.90 \text{ per day} / 7 \text{ hours per day} = \17.70 per hour.

This hourly rate is the same if the additional four preparation days Appellant worked in August are deducted:

- $\$123.90 \text{ per day} \times 4 \text{ days} = \495.60
- $\$22,797.60 - \$495.60 = \$22,302 \text{ a year} / 180 \text{ work days} / 7 \text{ hours per day} = \17.70 per hour.

2.6 Based on the above calculation, Appellant would have been receiving a gross monthly salary of \$2,478 (\$22,302 contract salary/9 months) if she had been paid for actual time worked during the school year.

2.7 Based on the \$17.70 per hour calculation, Respondent used the salary grid at a Range 44 (at 87.55 time) and determined that the step closest to \$17.70 per hour which was not less than what Appellant was earning immediately prior to her position becoming a classified position was at a Step I. Respondent determined that Appellant's monthly salary should be set at \$2556.75. At this monthly salary, Appellant's hourly wage was \$18.26 per hour:

- $\$2556.75 \times 9 \text{ months} = \$23,010.75$ new yearly salary/ $180 \text{ days} = 127.84$ per day/ $7 \text{ hours per day} = \18.26 per hour.

2.8 WAC 251-08-150 provides that when an exempt position is converted to classified service the employee is to be “placed at the first step within the salary range or range extension which is not less than the current exempt salary.

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that the method Respondent used to calculate her new salary actually resulted in her receiving a lower hourly rate than she received in the previous contract year. Appellant asserts that if she works 152.25 hours per month at a monthly salary of \$2556.75, she actually only earns \$16.79 per hour, substantially less than she was receiving. She also asserts that if she works 189 days she will receive an hourly wage of \$17.39 when calculated using her annual classified salary of \$23,010.75 ($\$2556.75 \times 9 \text{ months}$).

3.2 Respondent argues that the College complied with WAC 251-08-150 because it placed Appellant at the first step within the salary range that was not less than her current exempt salary for the 1997-98 school year. Respondent argues that as a classified employee, Appellant does the same amount of work as when she was exempt but that she is now paid more money. Respondent argues that Appellant still works the same number of days per year and that the calculations Appellant uses are like comparing apples to oranges.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

1 4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-
2 170).

3
4 4.3 The issue here is whether Respondent violated WAC 251-08-150 by placing Appellant at
5 Step I of Range 44 when Appellant's exempt position was converted to classified status. Appellant
6 provided two separate scenarios which resulted in two different hourly wages. These scenarios,
7 however, take into account additional work hours that Respondent clearly did not use when making
8 a determination on her monthly salary. Respondent used Appellant's current exempt salary to
9 determine her new classified salary. Respondent complied with WAC 251-08-150, when it
10 established Appellant's hourly wage and placed her in the first step (Step I) within Range 44 that
11 was not less than her exempt salary. Appellant has failed to prove that Respondent violated WAC
12 251-08-150 and the appeal should be denied.

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14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Judy Vivanco is denied.

16 DATED this _____ day of _____, 1999.

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18 WASHINGTON STATE PERSONNEL APPEALS BOARD

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20 _____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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Nathan S. Ford Jr., Member